93-487

FILED
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

ANTHONY O. AWOFOLU,

Petitioner,

v.

PUBLIC STORAGE MANAGEMENT INC.,ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Anthony O. Awofolu
9420 Reseda Blvd., #377
Northridge, California
91324
(818) 349 - 0254
Petitioner: "In Pro Se"

COPY

QUESTIONS PRESENTED FOR REVIEW

Whether the lower court improperly dismissed all indispensable and necessary individual Harvey Lenkin, president and executor, Obren B. Gerich, secretary and executor, Fran Stapher, agent and employee of Public Storage Management Inc., owner and a California custodial corporation, before the court under the due process and equal protection clauses to the fourteenth amendment of the United States Constitution?

Whether the federal district court lacks original jurisdiction over a removed civil rights action wherein matter in controversy is $87,641.30 total amount in (miscellaneous personal property for $7,641.30 and loss of researched product formulations for $80,000.00) and $400,000.00 in punitive damages;

arises under the illegal activities, concealment of adverse information, negligent performance, improper maintenance, improper manegement, mismanagement against the protected contract, security and obligation of the United States Constitution, Article 1, § 10, cl. 1;

arises under disclosure of fraud, illegal activities and business policies, illegal and unjust forcible entry, forcible removal and seizure, taking of personal property and researched product formulations privilege against unreasonable searches and seizure and denial of due process;

arises under deprivation of civil rights, right to privacy, illegal activities and business policies, deprivation of safeguard and protection privilege against the taking, deprivation of property without just compensation and due process of law;

arises under negligent performance, improper

maintenance, improper management, illegal taking, illegal business policy, fraud, privilege against denial of protected due process and equal protection clauses of the fourteenth amendment;
arises under non-disclosure of adverse information, unclear and inaccurate, insecurity, illegal business policies and activities privilege against consumer leases act of the 15 U.S.C. § 1667?

Whether a private corporation's illegal business policies of non-disclosure, negligent performance, improper maintenance, forcible entry, intrusion of privacy, fraud by the corporate official representatives privilege against the illegal taking, unreasonable searches and seizure and without due process of consumer's personal property and researched product formulations can be liable under 42 U.S.C. § 1983?

LIST OF ALL PARTIES TO THE PROCEEDING

The only other parties to the proceedings below not listed in the caption are: HARVEY LENKIN, president and executor, OBREN B. GERICH, secretary and executor, FRAN STAPHER, agent and employee of PUBLIC STORAGE MANAGEMENT INC., owner and a California corporation.

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APPENDICES

The opinion of the Federal District Court is attached as (Appendix A)

The order of the Federal District Court to show cause for want of subject matter jurisdiction is attached as (Appendix B)

The opinion of the Ninth Circuit Court is attached as (Appendix C)

The memoranda of the Court of Appeals for the Ninth Circuit is set forth as (Appendix

D)

The opinion of the Ninth Circuit denying the petition for rehearing with petition for suggestion en banc is attached as (Appendix E)

The Constitutional provisions involved are:

U.S. Const. Art. 1, § 10, cl. 1 (Appendix F)

U.S. Const. Fourth Amendment (Appendix G)

U.S. Const. Fifth Amendment (Appendix H)

U.S. Const. Fourteenth Amendment (Appendix I)

The statutory provisions involved are:

15 U.S.C. § 1667 (Appendix J)

15 U.S.C. § 1667a (Appendix K)

15 U.S.C. § 1667d (Appendix L)

28 U.S.C. § 1331 (Appendix M)

28 U.S.C. § 1343(3),(4) (Appendix N)

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No. _____

IN THE SUPREME COURT

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UNITED STATES OF AMERICA

October Term, 1993

ANTHONY O. AWOFOLU,

Petitioner,

v.

PUBLIC STORAGE MANAGEMENT INC.,ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Anthony O. Awofolu, appearing in pro se, respectfully requests that a writ of certiorari issue to review

the judgment and opinion of the Federal Court of Appeals for the Ninth Circuit dismissing all indispensable and necessary parties before the court after failed diligent exercise of personal service and subsequent mail service method for the purpose of due process clause, refusing to consider the plaintiff's interest in obligation of contract when Awofolu's rented storage space was forcibly entered without substantial justification and the protected personal property and a four year researched product formulations were invaded and permanently taken, refusing to grant both the compensatory and punitive dameges award under due process clause.

OPINIONS BELOW

The opinion of the court below in this case (Appendix C, infra, pp.C-32) has not yet been reported.

The Court of Appeals for the Ninth Circuit's Memoranda is set for in (Appendix D, infra, p. D-36) has been reported.

The opinion of the Ninth Circuit denying the petition for rehearing with petition for suggestion en banc is attached as (Appendix E , infra, p. E-37)

The opinions of the District Court for the Central District of California (Appendices A and B, infra, pp. A-24) were not reported.

JURISDICTION

The opinion of the United States Court of Appeals for the Ninth Circuit was entered on May 14, 1993, without argument nor prior notice that it was being decided on merits. A timely Petition for Rehearing and Suggestion En Banc was filed on May 28, 1993. The Court of Appeals' denial of the Petition for Rehearing and Suggestion En Banc was

issued on August 18, 1993 and set forth in Appendix E. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The pertinent provisions of the Constitution of the United States involved are:

United States Constitution Article 1, § 10, cl. 1, "or Law impairing the Obligation of Contract."

The Fourth Amendment to the Constitution of the United States, "unreasonable searches and seizure, probable cause..."

The Fourteenth Amendment to the Constitution of the United States, "denial of due process and equal protection clauses."

The statutory provisions involved are:

15 U.S.C. §§§ 1667; (a); (d); "consumer leases; consumer lease disclosures; civil liability of lessors."

28 U.S.C. § 1331, "original jurisdiction."

28 U.S.C. § 1343(3), "...to redress for deprivation, under regulation, custom or usage, of any right, privilege..."

42 U.S.C. § 1983, "civil action for deprivation of rights."

The Federal Rules of Civil Procedure provisions involved are:

The pertinent texts of the foregoing are set forth in the Appendices F - O, pp. F-39 - O-51, infra.

STATEMENT OF THE CASE

The United States District Court, Central District of California, had jurisdiction pursuant to Title 15, U.S.C. § 1667d; Title 28, U.S.C. §§ 1331 and 1343(3).

On March 23 through April 2, 1992, service of summons and complaint was attempted personally on all identifiable individual defendants without success, but with the exception of Public Storage Management Inc., which was served through his counsel, under the Federal Rules of Civil Procedure, Rule 4(c)(2)(C)(i).[1]

[1] Harvey Lenkin, president and executor; Obren B. Gerich, secretary and executor; Fran Stapher, agent and employee of Public Storage Management Inc., owner and a California corporation, were alleged as "Defendants." (See Rental Agreement, Record, pp. 40-41 and California Certificate of Incorporation, Record, pp. 42-44.) The defense counsel refused to acknowledge service of summons and complaint for the individual defendants by contending that, "you have to run after the others." Subsequently, the defendants refused personal service of summons and complaint at their business headquarters.

On April 4, 1992, service of summons and complaint by first - class mail was performed on the absent defendants by sending a self - addressed stamped envelope, two copies of notice and acknowledgment receipt, respectively, under the Federal Rules of Civil Procedure, Rule 4(c)(2)(C)(ii) and sufficient for the Fourteenth Amendment's due process clause and declaration of proof of service filed (R, 14-16).

On April 4, 1992, plaintiff received district court's order to show cause why plaintiff's civil rights cause of action should not be dismissed. Jurisdiction of the court over the claim was invoked under 28 U.S.C. §§ 1331 and 1343(3).

Federal Rules of Civil Procedure, Rule 8(a)(1) requires that a complaint contain a short and plain statement of the ground upon which the court's jurisdiction depends, that is, this claim arises under the United

States Constitution, Article 1, § 10; the Fourth, Fifth and Fourteenth Amendments to the Constitution. The court has jurisdiction of the claims pursuant to 42 U.S.C. § 1983 action, 28 U.S.C. §§ 1331 and 1343(3).

The plaintiff had alleged the following fact:

" 'taking,' miscellaneous personal property for $7,641.30 and loss of a four year researched product formulations for $80,000.00; $87,641.30 total amount in compensatory damages and $400,000.00 in punitive damages for emotional distress, civil rights, invasion of privacy, without due process and denial of equal protection, improper maintenance, improper management, operation, concealment of adverse information, safeguard, negligence, forcible entry without just, obligation, protection, deprivation of personal property, without just compensation.[2]

"Contract signed October 16, 1988, concealment of illegal activities, fraud, unclear, inaccurate and illegal business policy, individual official acting under policy.[3] For such other and further relief as this court may deem proper, amount in controversy and case, original jurisdiction."

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[2] "Personal property - 'any property which is not real property under laws of the State where situated at the time offered or otherwise made available for lease.'"

[3] "USE OF PREMISES AND COMPLIANCE WITH LAW: '... owner has no concern with the kind, quantity or value of of personal property stored by occupant and under no circumstances be deemed to exceed $5,000.00. Owner's premises and project are unsuitable for the storage of invaluable property . Occpant acknowledges that the premises may be used for storage only. It is specifically understood and agreed that owner not be concerned with precious or other goods stored by occupant in or about the premises pursuant to this Rental Agreement.'"
"LIMITATION OF OWNER'S LIABILITY; INDEMNITY: 'Owner and owner's agents shall not be liable to occupant for any damages, loss or personal injury to person, occupant or any property stored in, on or about the premises or the project, arising from any cause whatsoever, including, but not limited to negligence, fraud, willful injury or willful violation of law.
"INSURANCE: 'Occupant shall send the required insurance premiums to owner, together with the rental payments required by this Rental Agreement, and owner

shall transmit the insurance premium on occupant's behalf to the insurance company named in the brochure. Any payments made by occupant shall be applied first to any rent and other charges due to owner and any excess shall be transmitted to such insurance company to be applied to any insurance premium due.'" However, Harvey Lenkin, Obren B. Gerich and Fran Stapher found it appropriate to forcibly enter Awofolu's rented storage space, invaded his privacy and took his personal property and a four year researched product formulations for being defaulted in insurance premium payments. The defendants contended that, "they are big men in the state of California."

On April 20, 1992, plaintiff's response to district court's order to show cause was filed by contending Consumer Leases Act, designed for corporation's and individual's assumption for liability relating to disclosure of adverse information on who lease storage or land, in violation of 15 U.S.C. §§ 1667 and 1667a. Plaintiff alleged the following additional facts and laws: All identifiable and interested defendants were citizens of California and plaintiff a citizen of foreign nation, law or usage, rights or immunity. Jurisdiction was invoked under 15 U.S.C. § 1667d, civil liability of lessors, and 28 U.S.C. §§ 1331 and 1343(3). (See appendices, infra.)

On April 20, 1992, defense attorney filed motion and motion to dismiss for lack of jurisdiction, for failure to state claim, to take judicial notice of pending related state court action, to stay action, and

for sanction.

On April 28, 1992, the federal district court ordered the matter be dismissed without prejudice for lack of subject matter jurisdiction. No hearings were granted.

On April 30, 1992, plaintiff filed order granting motion for three judge court challenging the constitutionality of defendants' illegal business policies. Plaintiff sent notice to the absent defendants, under the Federal Rules of Civil Procedure, Rule 23(b)(2), for receiving the mailed summons and complaint, refusing to appear or opt-out from civil and constitutional rights action.[4]

4 FRCP,Rule 23(b)(2) - means the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;

On May 8, 1992, plaintiff filed an objection to the district court's findings.

On May 25, 1992, plaintiff filed Notice of Appeal to the Ninth Circuit.

On appeal, the Court of Appeals for the Ninth Circuit dismissed other individual defendants and affirmed on the same procedural theory parallel to the district court's findings for the defendants. No hearings were granted.

On July 28, 1993, the petitioner filed petition for rehearing with suggestion en banc. On August 18, 1993, without an opportunity for hearing, the petition was denied by the same circuit judges.

On August 26, 1993, petitioner filed petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

REASONS FOR GRANTING THE WRIT

The petitioner seeks the review of this Court for "special and importance" and because the federal court of appeals has so far departed from the acceptable and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

This Court has held in Greene v. Lindsey, 456 U.S. 444 (1982), that :

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 'notice reason -ably calculated, under all the circumstances, to apprise interest-ed parties of the pendency of the action' and afforded them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Where service of process was attempted on all individual defendants, Harvey Lenkin, President of Public Storage Management Inc.

and executor of California Certificate of Incorporation; Obren B. Gerich, Secretary of Public Storage Management Inc. and executor of California Certificate of Incorporation; Fran Stapher, agent and employee whose name was signed in contract for Public Storage Management Inc.; Public Storage Management Inc., owner and California custodial corporation as shown on the Rental Agreement and California Certificate of Incorporation, [5] who adamantly refused personal service at their business headquarters and their corporate manager had contended that, "it's the policy of the company not to acknowledge any process for any one working in this company and because their attorney had advised not to."

[5] Federal Rules of Civil Procedure, Rule 17(a) states that, "Every action shall be prosecuted in the name of the party of interest."

Subsequently, the mail service was performed. However, only Public Storage Manegement Inc. appeared to respond to Awofolu's complaint through their attorney.

Accordingly, the district court has also held in United States v. Jack Cozza, Inc., 106 F.R.D. 264 & 267 (1985), that:

> "The mailing of a notice pursuant to standard office procedure creates a presumption that notice was received."

All absent parties deemed bound by Federal Rules of Civil Procedure, Rule 23(b)(2), for receiving the mailed summons and complaint, with Notice of Acknowledgment of Receipt forms, but failed to appear or opt-out from the civil and constitutional rights causes of action.

Here, the Ninth Circuit judges dismissed all identifiable individual defendants.

Furthermore, in interpretation of 42 U.S.C. § 1983 motivational requirement in Monroe v. Pape, 365 U.S. 167 (1961),

this Court held that:

> "one acting under color of any statute, ordinance, regulation, custom, or usage, need not specifically intent a deprivation of a plaintiff's constitutional rights in order to be liable." "Thus, it would be sufficient that a defendant intentionally do the act which led to a deprivation."

Here, the Court authorized a claim for any type conduct recognized under tort law principle - whether the claim be based on intent to do wrong, gross negligence, or simple negligence. Monroe allowed recovery conduct amount to simple negligence and even negligent deprivation. Awofolu had alleged that defendant Public Storage Management Inc's illegal business policies, improper maintenance and management, in violation of due process and equal protection clauses, contractual obligation of consumer lease and impairment of contract, and its official representatives, Fran Stapher, Harvey Lenkin and Obren B. Gerich involved in illegal

activities through the implementation of their business policies forcibly entered Awofolu's storage space, invaded his privacy and permanently taken his personal property and a four year researched product formulation without substantial justification, in violation due process and equal protection clauses, the taking clause and unreasonable searches and seizures.[6]

[6] INSURANCE: The defendant Public Storage Management Inc., acting in accordance with respondeat superior doctrine, conceded the invasion of Awofolu's storage space and the subsequent illegal taking due to his default in insurance premium payments, that is, "occupant shall send the required insurance premium to owner, together with the rental payments required by this Rental Agreement, and owner shall transmit the insurance premium on occupant's behalf to the insurance company named in the brochure. Any payments made by occupant shall be applied first to any rent and other charges due to owner and excess shall be transmitted to such insurance company to be applied to any insurance due." The defendants still found it appropriate to cut off the pad-lock used to secure the storage space, forcibly removed all valuable belongings, left intangible remnants and locked the space with tiny pad-lock.

However, the district court declared insuficient of facts in Awofolu's complaint and evidence for it to exercise jurisdiction over the defendants. Additionally, the Ninth Circuit in its fact findings and laws found simple negligence, complete diversity and dismissed all interested parties.

The Court further held in Smith v. Wade, 461 U.S. 30 (1983), that:

> "Punitive damages are available in a proper case under § 1983. While there is little in the legislative history of § 1 of the Civil Rights Act of 1871 (from which § 1983 is derived) concerning the damages recoverable for the tort liability created by the statute, the availability of punitive damages was accepted as settled law by nearly all accepted by nearly all state and federal courts at the time of enactment. Moreover, this Court has rested decisions on related issues on the premise that punitive damages are available under § 1983."

Moreover, in Texaco Production Corp., v. Alliance Resource, (No. 92-479, Sup. Ct., p. 8072, June 25,1993), this held the

Supreme Court of Appeal of the West Virgina's actual damages and punitive damages based on bad faith tactic of a corporation, but not on individual representatives of the corporation.

In the case at hand, Awofolu's $87,641.30 total amount in compensatory damages ($7,641.30 in miscellaneous personal property and $80,000.00 in loss of a four year researched product formulations) and $400,000.00 in punitive damages for emotional distress, implementing fraudulent, unclear and inaccurate business policies, improper maintenance, concealment of illegal activities and the taking of personal property and researched product formulations without just cause were dismissed. The district court found no basis for exercising jurisdiction over the defendants and for violation of his Constitutional and Civil Rights. The Ninth Circuit affirmed.

Furthermore, in Lynch et al v. Household Finance Corp. et al. 405 U.S. 538, reh den 406 U.S. 911 (1972), holding the federal jurisdiction on private property rights said that:

> "there is no conflict between 28 U.S.C §§ 1331 and 1343(3), and the legislative history of 28 U.S.C. § 1331 does not provide any basis for narrowing the scope of § 1343(3) jurisdiction," and "federal courts have been particularly bedeviled by "mixed" case in which both personal and property rights are implicated, and the line between them has been difficult to draw with any consistency or principled objectively. The case before us presents a good example of the conceptual difficulties created by the test." (note omitted).

Nonetheless, the lower courts were narrowly applying their jurisdictional tests by dismissing the plaintiff's civil rights cause of action based on 1331 only, rather than on 28 U.S.C. §§ 1331 and 1343(3), and 15 U.S.C. § 1667d jurisdictional claims.

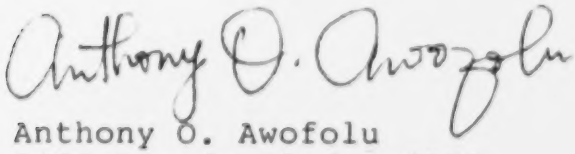
Nevertheless, in State Farm Fire & Casuality Co. v. Tashire, 386 U.S. 523, 87 S.Ct. 1199 (1967), this Court held "incomplete diversity" permitted under Article III of the Constitution. However, the lower courts refused to assume jurisdiction based on "complete diversity."

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Dated: August 26, 1993

Respectfully submitted,



Anthony O. Awofolu
9420 Reseda Blvd., #377
Northridge, California 91324
(818) 349 - 0254

Petitioner:"In Pro Per"

UNITED STATES DISTRICT OF CALIFORNIA

CENTRAL DISTRICT OF CALIFORNIA

ANTHONY O. AWOFOLU, Plaintiff, v. PUBLIC STORAGE MANAGEMENT, INC. ET AL. Defendant.	) CV 92-1715 WJR (GHKx)) ORDER TO SHOW CAUSE RE SUBJECT MATTER JURISDICTION Filed: APR. 1,1992

The Court received plaintiff's complaint alleging federal jurisdiction as follows: "Jurisdiction founded on existence of a federal question and amount in controversy. The claim arises under the Constitution of the United States, Article 1, § 10; the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States; U.S.C. Title 42 § 1983; U.S.C. Title 28 § 1343, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. U.S.C., Title 28, § 1331."

Based on review of plaintiff's complaint this Court finds no basis for plaintiff's alleged jurisdictional claims. The Constitutional provision regarding contracts (Article 1, § 10) declares that no state shall pass a law impairing the obligation of contract. Plaintiff does not allege the passage of any such state law. Rather, plaintiff has alleged that defendant breached a contract between two private parties regarding storage of personal property. Such an action properly lies within the jurisdiction of state court as no violation of pertinent federal law has been alleged, pursuant to 28 U.S.C. § 1331.

Plaintiff further alleges that federal jurisdiction derives from defendant's " violation of his right to privacy, protected by the Fourth, Fifth and Fourteenth Amendments to the Constitution." Plaintiff, however, does not allege facts constituting state action violating plaintiff's right

to privacy.

Plaintiff further alleges that defendant violated the "takings clause" of the Fifth Amendment. Plaintiff has not alleged any governmental act of taking.

Plaintiff alleges jurisdiction pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983, but plaintiff does not allege facts constituting violation of plaintiff's civil rights under color of state law, pursuant to 42 U.S.C. § 1983.

IT IS HEREBY ORDERED, therefore, that plaintiff show cause why this action should not be dismissed for lack of subject matter jurisdiction.

Plaintiff shall file a response by April 20, 1992.

Date: March 31, 1992

(Sgd) William J. Rea
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANTHONY O. AWOFOLU, Plaintiff, v. PUBLIC STORAGE MANAGEMENT, INC. ET AL. Defendant.	) CV 92-1715 WJR (GHKx)) ORDER TO DISMISS MATTER FOR LACK OF SUBJECT MATTER JURISDICTION) Filed:APR. 28,1992

Plaintiff's complaint alleges federal jurisdiction as follows: "Jurisdiction founded on existence of a federal question and amount in controversy. The claim arises under the Constitution of the United States, Article 1, § 10; the Fourth, Fifth and Fourteeth Amendments to the Constitution of the United States; U.S.C. Title 42 § 1983; U.S.C. Title 28 § 1343, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars U.S.C.,

Title 28, § 1331."

On April 1, 1992, this Court ordered plaintiff to show cause re subject matter jurisdiction by April 20, 1992. Plaintiff filed a timely response on April 20, 1992.

Based on review of plaintiff's complaint and plaintiff's response to the Court's order, this Court finds no federal subject matter jurisdiction for this action. The complaint fails to allege facts sufficient to meet the requirements for this Court to have subject matter jurisdiction.

The Constitutional provision regarding contracts (Article 1, § 10) declares that no state shall pass a law impairing the obligation of contract. Plaintiff does not allege the passage of any such state law. Rather, plaintiff has alleged that defendant breached a contract between two private parties regarding storage of personal property. Such an action properly lies within the jurisdiction of state court as

no violation of pertinent federal law has been alleged, pursuant to U.S.C. § 1331.

Plaintiff further alleges that federal jurisdiction derives from defendant's " violation of his right to privacy, protected by the Fourth, Fifth and Fourteenth Amendments to the Constitution." Plaintiff, however, does not allege facts constituting state action violating plaintiff's right to privacy.

In addition, plaintiff alleges that defendant violated the "takings clause" of the Fifth Amendment. Plaintiff has not alleged any governmental act of taking.

Plaintiff also alleges violation of equal protection, but he identifies no law or application of law at issue that might violate the equal protection doctrine.

Plaintiff further alleges jurisdiction pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983, but plaintiff does not allege facts

constituting violation of plaintiff's civil rights "under color of state law," pursuant to 42 U.S.C. § 1983.

In plaintiff's response to the Court's order to show cause, plaintiff alleges federal jurisdiction under 15 U.S.C. § 1667 and 28 U.S.C. § 1331 (federal question). This is not an adequate basis for federal jurisdiction in this matter. 15 U.S.C. § 1667 is federal law regarding certain consumer leases which sets forth various rules regarding disclosure, advertising and other matters relating to lessor liability. 28 U.S.C. § 1667(1) defines "consumer lease" as "a contract in the form of a lease or bailment for the use of personal property." Plaintiff's alleged lease for storage space does not fall within the coverage of § 1667(1). As appearing from the facts as alleged, if anything, plaintiff leased real property, not personal property.

28 U.S.C. § 1667(4) defines "personal property" as "any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease." Plaintiff's alleged lease was not for personal items but for an area of improved land for storage. IT IS HEREBY ORDERED, therefore, that this matter be dismissed without prejudice for lack of subject matter jurisdiction.

Date: April 27, 1992

(Sgd) William J. Rea
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY O. AWOFOLU,	)No. 92-55782
Plaintiff-Appellant,	)D.C. No. CV-92-1715-WJR
v.	)
PUBLIC STORAGE MANAGEMENT INC.; FRAN STAPHER; HARVEY LENKIN,President; OBREN B. GERICH,Secretary,	)MEMORANDUM*
Defendants-Appellees.	)

Appeal from the United States District Court for the Central District of California
William J. Rea, District Judge, Presiding

Submitted April 27, 1993**

Before: BROWNING, KOZINSKI, and RYMER, Circuit Judges.

Filed: May 14, 1993

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3

Anthony O. Awofolu appeals pro se the district court's order dismissing his action without prejudice pursuant to Fed. R. Civ. P. 12(b)(1) for an alleged breach of contract by Public Storage. Awofolu contends that the district court erred by finding that it lacked subject matter jurisdiction over his action. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo a district's dismissal for lack of subject matter jurisdiction. Kruso v. Int'l Tel. & Tel. Corp., 872 F.2d 1416, 1421 (9th Cir. 1989), cert. denied, 496 U.S. 937 (1990).

"[D]istrict courts.... have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Additionally, district courts have jurisdiction in civil actions where there is complete diversity of citizenship among the parties and the amount in controversy exceeds $50,000 exclusive of interest and costs. 28 U.S.C. § 1332.

Here, Awofolu filed an action against Public Storage alleging a breach of contract. Awofolu claimed that he signed a rental agreement with Public Storage, placed his personal belongings worth $7,641.30 in their storage facilities, and discovered that they were stolen. Awofolu sought $87,641.30 in special damages for loss of property and time, and $400,000.00 in general damages for violation of his constitutional and civil rights. Specifically, he alleged violations of Article I, § 10, the Fourth, Fifth and Fourteenth Amendments, 42 U.S.C. § 1983, and 28 U.S.C. §§ 1331, 1343. Finding no basis for Awofolu's alleged jurisdictional

claims, the district court issued an order to show cause why the action should not be dismissed for lack of subject matter jurisdition. In response, Awofolu filed an amended complaint which re-alleged some of his previous claims, and alleged a new claim under 15 U.S.C. § 1667, which the district court found inapplicable. The court then dismissed the matter for lack of subject matter jurisdiction. There is no error.

Because Awofolu failed to allege any facts invoking a federal question, the district court properly dismissed his action for lack of subject matter jurisdiction. See 28 U.S.C. § 1331.

AFFIRMED.

The **MEMORANDA** of the Court of Appeals for the Ninth Circuit is reported as Kruso v. Int'l Tel. & Tel. Corp., 872 F. 2d 1416, 1421 (9th Cir. 1989), cert. denied, 496 U.S. 937 (1990), and appears in Appendix D to this Petition.

The Ninth Circuit concluded and held, "the named plaintiffs are unable to state a claim against defendants for any of the wrongs alleged in their complaint. As a result, defendants Green and Brookwatter were properly dismissed by the district court."

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY O. AWOFOLU,	) No. 92-55782
Plaintiff-Appellant,	) D.C. No.CV-92-1715-WJR
v.	)
PUBLIC STORAGE MANAGEMENT INC.; FRAN STAPHER; HARVEY LENKIN,President; OBREN B. GERICH,Secretary,	) ORDER
Defendants-Appellees.	)

Before: BROWNING, KOZINSKI, and RYMER, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc

is rejected.

ARTICLE I, SECTION 10, CLAUSE 1, TO THE UNITED STATES CONSTITUTION

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or Law impairing the Obligation of Contract,

AMENDMENT IV TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V TO THE UNITED STATES CONSTITUTION

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nor be deprive of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 15, UNITED STATES CODE, SECTION 1667

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contracual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include credit sale as defined in section 1602(g) of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a person who leases or offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The term "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

TITLE 15, UNITED STATES CODE, SECTION 1667a

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(2) The amount of any payment by the lessee required at the inception of the lease;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear indentification of the property to which security interest relates;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the

lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination. The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

TITLE 15, UNITED STATES CODE, SECTION 1667d

(a) Any lessor who fails to comply with any requirement imposed under section 1667a of this title with respect to any person is liable to such person as provided in section 1640 of this title.

(c) Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement.

TITLE 28, UNITED STATES CODE, SECTION 1331

The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

TITLE 28, UNITED STATES CODE, SECTION 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights,...

TITLE 42, UNITED STATES CODE, SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.